

OGC 76-6874
4 December 1976

MEMORANDUM FOR: AI/DDA

STATINTL

FROM :
Associate General Counsel

SUBJECT : Proposed Letter to Archivist

1. We have several concerns with the proposed reply to Dr. Rhoads' letter. The most important one involves the matter of timing and, therefore, the substance of the letter. It seems unduly embarrassing to answer a June letter in the first week of December by promising to continue the moratorium until its announced expiration date which is 10 December. I should think the embarrassment could be reduced if we cast the letter in terms of confirming the oral assurances I gave Dr. O'Neill in June and calling attention to our 22 November Notice in the Federal Register.

2. Several other points for consideration:

(a) Since we refer to our Notice in the Federal Register, should we not furnish a copy?

(b) The quotation from Rhoads' letter of 7 June is not precisely accurate.

(c) Should we pinpoint the suggestion, in the last paragraph of the first page that if the General Counsel is prepared to take an improper action, the Agency would also. The point here is that the paragraph (which I realize comes from our Notice in the Federal Register) suggests that the General Counsel could approve the destruction of documents which are the subject of litigation or of investigation by Justice.

(d) It is not entirely clear, partly as a result of the new "Federal Records Management Amendments of 1976," that the relevant statute provisions relating to the disposal of records are

part of the Federal Records Act. A solution might be to substitute for the words "the provisions of the Federal Records Act as amended" the words "the applicable provisions of Title 44 of the U.S. Code."

(e) I would delete the next to the last paragraph, which is not really responsive to Dr. Rhoads' letter.

3. I am writing this without access to Senate Resolution 21 or the 2 June letter to Senator Scott, which we would want to look at, and will do so first thing Monday, in connection with this reply. We are also attempting to finalize a reply to the letter from Congresswoman Abzug concerning the application of the Federal Records Act to CIA and it would be important that the two letters be in agreement.



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